

IN THE COURT OF APPEALS
FIRST APPELLATE DISTRICT OF OHIO
HAMILTON COUNTY, OHIO

STATE OF OHIO,	:	APPEAL NOS. C-090298
		C-090299
Plaintiff-Appellee,	:	C-090300
vs.	:	TRIAL NOS. C-08TRC-14392A
		C-08TRC-14392B
JASON HAMILTON,	:	C-08TRC-14392C
Defendant-Appellant.	:	<i>JUDGMENT ENTRY.</i>

We consider this appeal on the accelerated calendar, and this judgment entry is not an opinion of the court.¹

Following a jury trial, defendant-appellant Jason Hamilton was convicted of driving while intoxicated² and refusing a chemical test.³ Following a bench trial, Hamilton was also convicted of crossing marked lanes.⁴ Hamilton was sentenced to three years of community control with the conditions that he maintains employment, submit to random urine screens, and attend a driver's intervention program. He was also ordered to pay a fine and sentenced to a six-month jail term that was suspended with credit for time served. Hamilton now appeals his convictions. For the following reasons, we affirm the trial court's judgment.

¹ See S.Ct.R.Rep.Op. 3(A), App.R. 11.1(E), and Loc.R. 12.

² R.C. 4511.19(A)(1)(a).

³ R.C. 4511.19(A)(2)(b).

⁴ R.C. 4511.33.

Hamilton was arrested in the early morning hours of March 18, 2008, after Springfield Township police officer Chris Williams observed Hamilton swerving. Upon stopping him, Williams noted that Hamilton had difficulty retrieving his driver's license, stumbled when exiting from his car, had bloodshot, watery eyes, and admitted to having had a beer. Williams testified that Hamilton failed all three sobriety tests (walk-and-turn, one-leg-stand, and horizontal gaze nystagmus). Williams arrested Hamilton and transported him to a police station. There, Hamilton refused to submit to a chemical test.

At the station, Hamilton was placed in the "DUI room" while Williams reviewed some paperwork with him. Williams testified that the DUI room was video-taped by a security camera. Around the time that Hamilton was arrested, the "administration" of the police department had just started, as part of its routine practice, making a copy of the security video and placing it in the file of any person arrested for driving under the influence of alcohol. It was because of this, William's testified on cross-examination, that he had told Hamilton's trial counsel that there was a videotape of Hamilton in the DUI room and that he would bring it to him. Williams checked at the police department, but there was no videotape in Hamilton's file, and he was not sure if there ever was. He then testified that he went to the police station's security department to request a copy of the videotape from March 18, 2008, but the department informed him that the videotape had not been preserved.

Williams testified that, while in the DUI room, Hamilton was calm and "no significant" events took place. Finally, Williams testified that Springfield Township police cruisers did not have video cameras so there was never a videotape of the field sobriety tests.

During closing arguments, Hamilton's trial counsel commented on the fact that there was no longer a videotape available of when Hamilton had been in the DUI room, and, that if there had been, then it might have shown some indication regarding whether Hamilton had been intoxicated. Despite this argument, the jury found Hamilton guilty as charged.

In his appeal, Hamilton brings forth a single assignment of error, contending that the trial court committed plain error by failing to dismiss the charges against him as a proper sanction against the state for failing to produce a videotape of Hamilton in the holding cell after he had been arrested. We are unpersuaded.

Because Hamilton did not file a motion to dismiss the charges against him for lack of a videotape, we review this alleged error under a plain-error standard.⁵ Notice of plain error is to be taken with the utmost caution, and plain error does not exist unless it can be said that but for the error the outcome of the trial clearly would have been otherwise.⁶

After reviewing the record, we hold that the trial court did not commit plain error by allowing the charges against Hamilton to stand despite the fact that the state had failed to keep a copy of the videotape from the police department's security camera. The outcome of the trial would not have been any different if the state had preserved the videotape. The videotape would have either corroborated the arresting officer's testimony that Hamilton was intoxicated or shown that Hamilton was sober. But Officer Williams testified that Hamilton was calm and that no significant events reflecting intoxication had occurred while Hamilton was sitting in the DUI room after the arrest. The jurors still found Hamilton guilty even though they knew that

⁵ See Crim.R. 52(B).

⁶ *State v. Long* (1978), 53 Ohio St.2d 91, 372 N.E.2d 804.

he had not appeared intoxicated in the DUI room. And there was overwhelming evidence to support the jury's finding of guilty—Officer William's testimony regarding the failed field sobriety tests and Hamilton's demeanor at the time of the stop.

Accordingly, the trial court did not err by failing to dismiss the charges for driving under the influence of alcohol or for refusing to submit to a chemical test. Further, we hold that the trial court also did not err by failing to dismiss the marked-lanes conviction. As Hamilton conceded in his brief, the failure to preserve the videotape did affect this conviction because the initial stop of Hamilton was not videotaped.

Therefore, the single assignment of error is overruled, and the judgment of the trial court is affirmed.

Further, a certified copy of this judgment entry shall be sent to the trial court under App.R. 27. Costs shall be taxed under App.R. 24.

HILDEBRANDT, P.J., DINKELACKER and MALLORY, JJ.

To the Clerk:

Enter upon the Journal of the Court on May 19, 2010
per order of the Court _____.
Presiding Judge